
REDRESS SCHEMES FOR LETTINGS AGENCY WORK AND PROPERTY MANAGEMENT WORK

To: **Extraordinary Cabinet – 19 February 2015**

Main Portfolio Area: **Housing and Planning Services**

By: **Cllr Richard Nicholson, Deputy Leader and Cabinet Member for Housing and Planning Services**

Classification: **Unrestricted**

Ward: **All wards**

Summary: Since 01 October 2014, Thanet District Council has been under a statutory duty to ensure that any person engaged in lettings agency or property management work is a member of a Government approved redress scheme. This report seeks delegated authority for the Director of Community Services to implement the necessary enforcement arrangements.

For Decision

1.0 Introduction and Background

1.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, made under the Enterprise and Regulatory Reform Act 2013, introduced new enforcement responsibilities for Thanet District Council.

1.2 Since 01 October 2014, all lettings agents and property managers in England have been under a legal obligation to become a member of a Government approved redress scheme.

1.3 This now means that tenants, prospective tenants, landlords dealing with lettings agents in the private rented sector; as well as leaseholders and freeholders dealing with property managers in the residential sector can complain to an independent person about the service received. This will make it easier for tenants and landlords to complain about bad service and prevent disputes escalating.

1.4 The three approved redress schemes are:

- Ombudsman Services Property (www.ombudsman-services.org/property.html)
- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

1.5 To ensure that the requirement for lettings agents and property managers to belong to a redress scheme is effective, enforcement arrangements have been set out in the Order. As a district council, Thanet District Council is the “enforcement authority” under the Order.

- 1.6 An enforcement authority can impose a fine (“a monetary penalty”) of up to £5,000 if it is satisfied, on the balance of probabilities, that a person is engaged in letting agency or property management work and has failed to join one of the three approved schemes (and is not exempt from the requirement to be a member of such a scheme).
- 1.7 The level of penalty is to be determined by the enforcement authority; however, there are strict procedures set out in the Order that must be followed before a penalty can be imposed. These include serving a Notice of Intent on the relevant person, who then has 28 days in which to make representations or objections. Following careful consideration of any representations or objections received, the enforcement authority must decide whether or not to impose a monetary penalty, with or without modifications. This must be in the form of a Final Notice, against which appeals can be made to the First-Tier Tribunal.
- 1.8 The enforcement authority may recover the monetary penalty on the order of a court, as if payable under a court order. Any monetary penalties received by an enforcement authority may be kept by the authority and used for any of its functions.

2.0 The Current Situation

- 2.1 The Council’s Housing Regeneration Team has been collating information about letting agents and property managers operating in Thanet. In January 2015, all known agents and managers were written to and asked to complete and return a form to confirm their approved membership. Returned forms are being checked to confirm validity of stated membership.
- 2.2 All 59 known letting agents and property managers with an address (or head office) in Thanet were asked to confirm their memberships within 30 days. As of 05 February 2015, 33 satisfactory replies had been received. The remaining 26 letting agents and property managers have until 16 February 2015 to make a response.
- 2.3 Enforcement guidance, which has yet to be officially published, was made available to local authorities by the Department for Communities and Local Government (DCLG) in December 2014.
- 2.4 Enforcement arrangements now need to be put in place to ensure that the Council’s enforcement duties can be met. The council must also decide the level at which to set the monetary penalty.
- 2.5 The enforcement guidance issued by DCLG states that: *“The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.”*

3.0 Options

- 3.1 The available options are limited as the Council is under a mandatory duty to enforce the scheme. Therefore, delegated authority must be given to the appropriate officer of the Council. However, the level of the monetary penalty is at the Council’s discretion. The options are:
- To agree that the monetary penalty be set at the maximum £5,000 in accordance with Government guidance (unless there are extenuating circumstances); or

- To agree that the monetary penalty be set at some other amount.

4.0 Corporate Implications

4.1 Financial and VAT

- 4.1.1 Enforcement of the Order is not likely to be onerous; however, there will necessarily be some resource implications. The Housing Regeneration Team is experienced in taking enforcement action in relation to private sector housing, and it is believed that this work can fit alongside this team's existing responsibilities without difficulty and that there will be no additional financial burden to the Council.
- 4.1.2 It is not anticipated that there will be many (if any) fines issued, as the monetary penalty is likely to be a significant deterrent to all those engaged in relevant work. As such, the Council should not expect to receive any regular income from the issuing of monetary penalties under the Order.

4.2 Legal

- 4.2.1 Thanet District Council as of 01 October 2014, is an "enforcement authority" for the purposes of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 ("the Order"), pursuant to Article 2 thereof.
- 4.2.2 The Council is by virtue of Article 7 of the Order obliged to enforce the said Order. The Council is therefore required to discharge the enforcement functions referred to in this report. The Order has been made pursuant to the Enterprise and Regulatory Reform Act 2013 ("the Act"). Article 3 of the Order imposes the requirement to belong to a redress scheme on persons who engage in "lettings agency work" and Article 5 thereof imposes the requirement to belong to a redress scheme on persons who engage in "property management work". Section 83(2) of the Act provides that "A 'redress scheme' is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person." Sections 83(7) and 84(6) of the said Act define what is meant by "lettings agency work" and "property management work" respectively.
- 4.2.3 There are three approved redress schemes, as mentioned in paragraph 1.4 above.
- 4.2.4 The Council is also empowered to impose a penalty, where it is satisfied that the redress scheme registration requirements have not been met. Article 8(1) of the Order provides that failure to belong to a redress scheme may result in a monetary penalty being imposed by the "enforcement authority", and the "amount of the monetary penalty must not exceed £5,000" (Article 8(2)). The proposed arrangements detailed in this report are therefore lawful and discharge the Council's requirements under the above legislation.
- 4.2.5 The Equality Act 2010 introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

4.2.6 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

4.2.7 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Services, Public functions and Associations – Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force, but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/equality-act-codes-practice-and-technical-guidance>

4.3 Corporate

4.3.1 Housing in the private sector should be properly managed and maintained in a safe condition. By ensuring that all lettings agents and property managers are members of an independent and approved redress scheme links to the following corporate priorities:

Priority 2: We will tackle disadvantage across our district;
Priority 4: We will make our district a safer place to live.

4.4 Equity and Equalities

4.4.1 Vulnerable groups may suffer adversely as a consequence of letting agents and property managers operating in an unfair way. Rogue operators often target those they perceive to be the most vulnerable. As such, the implementation of the Order is likely to have positive impacts for some of the protected characteristics.

4.4.2 As the Order applies equally to all letting agents and property managers there is not considered to be any adverse impacts on the protected characteristics.

5.0 Recommendation(s)

- 5.1 That Cabinet agree to delegate the implementation and enforcement arrangements for The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (SI 2014/2359) to the Director of Community Services.
- 5.2 That Cabinet also agree that the penalty for non-compliance with the Order be £5,000, unless extenuating circumstances apply.
- 5.3 That Cabinet agree to authorise the Director of Community Services, or an officer authorised by the Director of Community Services, to determine what are extenuating circumstances and to determine what alternative penalty is appropriate in each case.

6.0 Decision Making Process

- 6.1 This is a non-key decision

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Annex List

Annex 1	N/A
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Background Papers

Title	Details of where to access copy
None.	N/A

Corporate Consultation Undertaken

Finance	Clive Bowen, External Funding Officer
Legal	Ciara Feeney, Senior Litigation Lawyer